Equality of Opportunity and Freedom from Discrimination

Opportunités égales et inclusivité

THE MANITOBA
HUMAN RIGHTS
COMMISSION

LA COMMISSION DES
DROITS DE LA PERSONNE
DU MANITOBA

The Manitoba Human Rights Commission and Human Rights Adjudication Panel

ANNUAL REPORT 2016

ATTORNEY GENERAL
MINISTER OF JUSTICE

Room 104
Legislative Building
Winnipeg, Manitoba CANADA
R3C 0V8

The Honourable Janice C. Filmon, C.M., O.M.
Lieutenant Governor of Manitoba
Room 235 Legislative Building
Winnipeg MB R3C 0V8

May it Please Your Honour:

I have the privilege of presenting for the information of Your Honour the Annual Report of The Manitoba Human Rights Commission and Human Rights Adjudication Panel for the calendar year 2016.

Respectfully submitted,

Heather Stefanson
Minister of Justice and Attorney General

THE MANITOBA
HUMAN RIGHTS
COMMISSION

LA COMMISSION DES
DROITS DE LA PERSONNE
DU MANITOBA

The Honourable Heather Stefanson
Minister of Justice and Attorney General
Legislative Building
Winnipeg, MB R3C 0V8

Dear Minister:

Pursuant to section 6(2) of *The Human Rights Code*, we are pleased to provide you with the Annual Report of the Manitoba Human Rights Commission and the Human Rights Adjudication Panel for the calendar year 2016.

Yours sincerely,

Yvonne Peters
Chairperson
Board of Commissioners

7th Floor, 175 Hargrave Street, Winnipeg, MB R3C 3R8
Tel: 204-945-3007 Toll Free: 1-888-884-8681 Fax: 204-945-1292
Email: hrc@gov.mb.ca www.manitobahumanrights.ca

THE MANITOBA **HUMAN RIGHTS** COMMISSION

LA COMMISSION DES **DROITS DE LA PERSONNE** DU MANITOBA

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MANITOBA HUMAN RIGHTS COMMISSION

The Manitoba Human Rights Commission is an independent agency of the Government of Manitoba responsible for administering *The Human Rights Code* in this province.

It is comprised of ten Commissioners appointed by the Lieutenant Governor in Council to represent the geographic, cultural, social and economic profile of Manitoba and twenty-one staff led by an Executive Director.

The Human Rights Code prohibits discrimination and harassment in employment, services , contracts and housing, based on any of the following:

- ancestry, including colour and perceived race;
- nationality;
- ethnic background;
- religious belief;
- age
- sex, including pregnancy;
- gender identity;
- sexual orientation;
- marital or family status ;
- source of income ;
- political belief;
- physical or mental disability including reliance on a service animal, wheelchair or other remedial device; and
- social disadvantage.

The Commission takes complaints of discrimination, investigates them and determines if there is sufficient evidence that *The Human Rights Code* has been contravened to warrant requesting that the Human Rights Adjudication Panel make a final decision about the complaint. At the adjudication stage, the Commission represents the public's interest in eliminating discrimination. The Commission promotes early resolution of complaints and offers mediation services at various stages of the complaint process.

The Commission develops and conducts human rights education programs and engages in outreach initiatives and projects to promote human rights principles.

CHAIRPERSON'S MESSAGE

As I interact with the public, I am impressed with the growing awareness of human rights. However, what still seems to be challenging for some, is how to actually go about respecting human rights. Recognizing different religious beliefs, accepting diverse cultural customs, building an accessible world and ensuring reasonable accommodation for parental needs still seems to trigger feelings of fear, frustration and worry about financial cost. This is why human rights commissions are so important. They can help guide us how to create an inclusive society. They can also help to foster attitudes based on merit and fact and not on negative assumptions and stereotypes.

Public education is one of the best ways to promote human rights and eliminate discrimination and has been an important priority for the Commission this year. I wish to thank the staff who in addition to their regular job responsibilities took the time to make numerous presentations at conferences, workshops and businesses. I would also like to thank the Issues Committee, composed of Board members, staff and community, for its efforts to create additional opportunities for the Commission to promote awareness of the discrimination experienced by newcomers and indigenous people.

One of the biggest disappointments this year was the Court of Queen's Bench decision in *Northern Regional Health Authority v. Manitoba Human Rights Commission and Horrocks*. The Court overturned the adjudication decision that found that Horrocks had been discriminated against because her employer had failed to reasonably accommodate her needs based on an addiction to alcohol. The Court's decision is troubling because it suggests that unionized employees may have less choice than non-unionized employees as to how they resolve complaints of discrimination as they must seek redress through the grievance process. The Commission has appealed the Court's ruling and is hopeful that this decision will be reversed.

This year we said good-bye to Commissioner Anne Lacquette. Thank you also to our amazing staff for their excellent and professional work. The Board of Commissioners could not carry out its responsibilities without the support and well-organized information provided by the staff. Well done!

Yvonne Peters
Chairperson

EXECUTIVE DIRECTOR'S MESSAGE

In 2016, we were dedicated to implementing our three strategic priorities: **raising our profile as the primary resource for the public on human rights; developing our role as a human rights educator; and establishing service standards in our complaint process.**

We have refocused every aspect of our work on the underlying premise of *The Human Rights Code* - the recognition of the individual worth and dignity of every member of the human family.

This has allowed us to improve our intake process which has included training and cross-training staff to respond to public enquiries, refreshing our telephone answering system, assessing our internal case management system and optimizing our use of technology. Feedback from over 400 individuals who participated at various stages of the complaint process also helped identify key areas for improvement.

This has also prompted us to change the way in which we deliver human rights education. We now use a simple, rights-based approach to educating about human rights rather than a more traditional seminar style, do and don't approach. We also started the process of revising all of our public education materials, including our current website and Guidelines.

We are particularly excited about launching the *Making Connections* project to address discrimination against Indigenous people, guided by a Council of Elders. Our greatest lesson has been to proceed thoughtfully as we develop relationships and increase our understanding of Indigenous knowledge and traditions.

We recognize that we remain challenged to be able to investigate complaints in a timely way. I am hopeful that with a full complement of staff in 2017 and new internal systems in place, we will be able to significantly reduce the time the public waits to have their complaints determined by our Board of Commissioners over the next year.

Our complaint statistics as well as an overview of the notable human rights decisions and settlements in 2016 are covered elsewhere in this report.

We said goodbye to a number of staff including Tanya Buschau, Patricia Knipe and Pam Roberts who were long standing staff with the Commission. All three of these long standing staff contributed so much to the Commission and are missed. Thank you to all of our exceptional staff and to our Commissioners for your unwavering dedication to our work and for always being open to trying something new. With this combination, we will only continue to better serve Manitobans.

Isha Khan
A/Executive Director & Counsel

Commission advocates for the right to use the complaint process in *The Human Rights Code*

The Commission appealed the decision of the Court of Queen's Bench in *Northern Regional Health Authority v. Manitoba Human Rights Commission and Horrocks* on the basis that unionized employees should continue to be able to file their human rights complaints with the Commission, if they wish.

In a 2015 decision, Adjudicator Sherri Walsh decided that Horrocks had been discriminated against when the NRHA failed to reasonably accommodate her needs based on an addiction to alcohol and ordered that she be reinstated with back wages and $10,000 in compensation for injury to dignity. That decision was overturned by the Court on the basis that Walsh, as a member of the Human Rights Adjudication Panel, did not have jurisdiction to hear Horrocks' complaint. The Commission will argue before the Court of Appeal that if the Manitoba legislature had intended to restrict the complaint process in *The Human Rights Code* for the use of non-unionized workers, it would have made that intent explicit. The Court of Appeal's decision is expected in 2017 and will clarify whether or not the rights of unionized workers are indeed restricted in this province.

Commission launches project to identify systemic barriers

In March 2016 as part of the Commission's work to foster reconciliation, we launched the three-year *Making Connections* project to identify systemic barriers faced by Indigenous and newcomer communities in Manitoba. Realizing the breadth of this task, our objective is to build relationships and learn from these communities to inform our public education work around discrimination based on ancestry. We have gathered a Council of Elders to guide us through phase 1 of the project. They have helped us recognize the need to increase awareness of *The Human Rights Code* and the Commission in rural and Northern communities and to develop our own understanding of Indigenous knowledge and traditions, as a starting point. It is expected that phase 1 consultations will continue through 2017 and result in a public consultation report. Phase 2 will focus on the newcomer community and will follow a similar format.

From L-R Commissioner Diane Dwarka, Elder Mae Louise Campbell, Elder Norman Meade, Elder Paul Guimond and Vice-Chairperson Loretta Ross

Commission beats deadline to develop Accessibility Plan

In December 2016, the Commission approved an Accessibility Plan that outlines how the Commission will address the Customer Service Standard, the first of five standards under the *Accessibility for Manitobans Act*. The Commission chose to beat the December 2017 deadline set for all public, private and nonprofit organizations. We hope this will assist others to recognize that creating an inclusive work environment benefits everyone.

Decision recognizes importance of compensating for injury to dignity

In April 2016, Adjudicator Robert Dawson issued a decision in *Chaudhry et al. v. A+ Financial Services Ltd. and Wayne McConnell* finding that the owner, McConnell had created a toxic and intimidating work environment for his employees and subjected the two female complainants to unwanted sexual advances. Over the course of the eight-day hearing, the Commission presented evidence of numerous emails sent to the complainants containing vulgar and explicit photographs and examples of racist comments made by the owner. For years the awards for injury to dignity awarded by members of the Human Rights Adjudication Panel were recognized as being much lower than awards issued in other jurisdictions. In this case, each complainant was awarded $20,000 for injury to their dignity, self respect and feelings under section 43(2) of *The Human Rights Code* sending a clear message that the type of harassment they were subjected to was deserving of a substantial monetary award. The Respondents immediately applied for a judicial review but have not filed the court materials necessary to proceed with the review.

School Division develops inclusive Gender Identity Guidelines

The Commission worked with Elizabeth Burgos and the River East Transcona School Division to resolve the complaint alleging that RETSD had discriminated Burgos' transgender, elementary school-aged daughter Bella, when she was refused access to the girl's washroom in her school. Before the complaint could be heard by the Human Rights Adjudication Panel, RETSD revised their Gender Identity Guidelines to clarify the rights of transgender students and staff and to set out specific situations in which they might request accommodation and how that would be handled.

Elizabeth Burgos and her daughter Bella

The settlement discussions enabled the Commission to share its rights- based approach to gender inclusion and resulted in RETSD setting an example for other educators in Manitoba and across Canada to ensure equal rights for all students and staff. The Commission has since revised its own Guideline, *Discrimination Based on Gender Identity* providing further information to assist the public in navigating this issue.

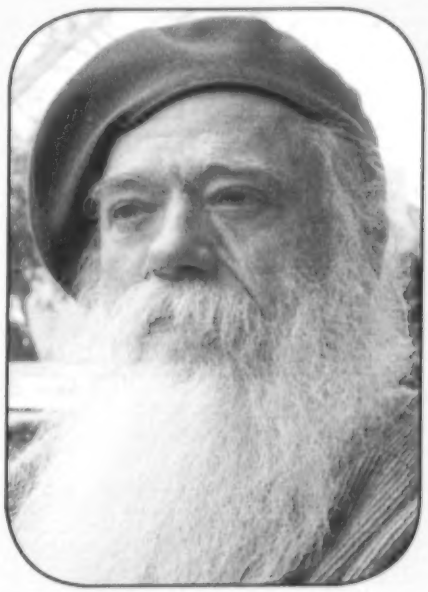
Decision emphasizes complainant must establish a disability-related need to be accommodated

In the summer of 2016, Adjudicator Lynne Harrison released her decisions on the *Pollock, Kinvig, Renard and Gordon v. Winnipeg Condominium Corp. No. 30* complaints. The complainants each alleged that the condominium failed to reasonably accommodate their respective needs to have non-tinted windows when they refurbished the exterior of the building. In her decisions, Adjudicator Harrison accepted that each of the complainants had disabilities but despite medical evidence presented at the hearing was not satisfied that any of them had established that they had a disability-related need to have non-tinted windows. These decisions emphasize the responsibility of the person requesting accommodation to establish that they have a disability-related need, rather than a preference, that must then be considered by the employer, service or housing provider.

"The Code requires the accommodation of an individual's disability-related needs, not what would be preferable or desirable for them. In my view, this is an important distinction." - Adjudicator Harrison.

Settlement remedies every senior impacted by discrimination

In September 2016, a complaint by Jim Derksen alleging that the City of Winnipeg had discriminated against individuals with disabilities who use Handi-Transit was resolved with the assistance of the Commission. City Council approved reimbursing every senior who had utilized Handi-Transit services but had not received the seniors discount available on regular transit, for the difference in fare and set up a process for users to apply for the reimbursement or credit. This precedent-setting settlement confirms that a human rights remedy is intended to make those impacted by discrimination whole.



Jim Derksen

La Commission défend le droit d'utiliser le processus de plainte prévu par le Code des droits de la personne

La Commission a fait appel de la décision rendue par la Cour du Banc de la Reine du Manitoba dans l'affaire *Office régional de la santé du Nord c. la Commission des droits de la personne du Manitoba et Linda Horrocks,* pour le motif que les travailleurs syndiqués désireux de déposer une plainte en matière de droits de la personne auprès de la Commission devraient continuer à pouvoir le faire. Dans une décision de 2015, l'arbitre Sherri Walsh avait jugé que M[me] Horrocks avait été victime de discrimination lorsque l'Office régional de la santé du Nord n'avait pas fait les adaptations raisonnables nécessaires pour répondre aux besoins liés à une dépendance à l'alcool de M[me] Horrocks. L'arbitre Walsh avait ordonné à l'Office régional de la santé du Nord de réintégrer M[me] Horrocks dans son milieu de travail avec paiement du salaire perdu et une compensation de 10 000 $ pour atteinte à la dignité. La Cour avait infirmé cette décision pour le motif que M[me] Walsh, en tant que membre du Tribunal d'arbitrage des droits de la personne, n'avait pas la compétence pour entendre la plainte de M[me] Horrocks. La Commission présentera à la Cour d'appel l'argument que si l'Assemblée législative du Manitoba avait eu l'intention de limiter aux travailleurs non syndiqués l'accessibilité au processus de plainte prévu en vertu du Code des droits de la personne, elle aurait précisé cette intention en termes explicites. La décision de la Cour d'appel, attendue en 2017, devrait préciser si les droits des travailleurs syndiqués sont effectivement limités ou non au Manitoba.

« Le Code exige de répondre de façon raisonnable aux besoins d'un particulier fondés sur une incapacité, et non pas sur ce qui serait préférable ou souhaitable pour lui. De mon point de vue, il s'agit là d'une distinction importante. » - Aribitre Harrison.

La Commission lance un projet visant à déterminer les obstacles systémiques

En mars 2016, dans le cadre des travaux de la Commission visant à favoriser la réconciliation, nous avons lancé le projet trisannuel *« Making Connections »*, dont le but est de déterminer les obstacles systémiques auxquels se heurtent les communautés autochtones et de nouveaux arrivants au Manitoba.

Comprenant l'ampleur de cette tâche, notre objectif est d'établir des liens et d'apprendre de l'expérience de ces communautés en vue de guider nos activités d'éducation du public sur la discrimination fondée sur l'ascendance. Nous avons mis sur pied un conseil des aînés qui nous oriente au cours de la première phase du projet. Les membres de ce conseil nous ont sensibilisés à la nécessité de faire connaître davantage le Code des droits de la personne et le rôle de la Commission dans les communautés rurales et du Nord, et d'approfondir notre propre compréhension de la culture autochtone, comme point de départ. Les consultations dans le cadre de la phase 1 du projet devraient se poursuivre en 2017 et aboutir à un rapport de consultation publique. La phase 2 portera essentiellement sur les nouveaux arrivants et suivra un modèle semblable.

Légende : De gauche à droite : Diane Dwarka (commissaire), Mae Louise Campbell (aînée), Noman Meade (aîné), Paul Guimond (aîné) et Loretta Ross (vice-présidente)

La Commission crée un plan d'accessibilité avant la date limite

En décembre 2016, le Conseil des commissaires a approuvé un plan d'accessibilité qui donne un aperçu de la manière dont la Commission répondra à la Norme de service à la clientèle, la première des cinq normes établies en vertu de la *Loi sur l'accessibilité pour les Manitobains*. La Commission a choisi d'adopter le plan avant la date limite de décembre 2017, qui s'applique à tous les organismes publics, privés et sans but lucratif. Nous espérons que cette décision aidera d'autres organismes à reconnaître que la création d'un milieu de travail inclusif profite à tout le monde.

Une décision qui reconnaît l'importance du dédommagement pour atteinte à la dignité

En avril 2016, l'arbitre Robert Dawson a rendu une décision dans l'affaire *Chaudhry et al. c. A+ Financial Services Ltd. et Wayne McConnell*, concluant que le propriétaire, Wayne McConnell, avait créé un milieu de travail nocif et intimidant pour ses employés, et qu'il avait soumis les deux plaignantes à des avances sexuelles indésirables.

Au cours des huit jours de l'audience, la Commission a présenté la preuve de nombreux courriels envoyés aux plaignants par le propriétaire et contenant des photos vulgaires et explicites ainsi que des commentaires racistes. Pendant des années, le montant des dommages-intérêts attribués au Manitoba par les membres du Tribunal d'arbitrage des droits de la personne était considéré comme nettement inférieur à celui des dommages-intérêts accordés ailleurs au pays. Dans cette affaire, et en vertu du paragraphe 43(2) du Code des droits de la personne, on a accordé à chacun des plaignants des dommages-intérêts de 20 000 $ pour atteinte à leur dignité, à leur amour-propre et à leurs sentiments, indiquant clairement que le type de harcèlement auquel ils avaient été soumis méritait d'être sanctionné par des dommages-intérêts importants. Les intimés ont immédiatement demandé un examen judiciaire de la décision, mais n'ont pas déposé tous les documents nécessaires à la conduite de l'examen.

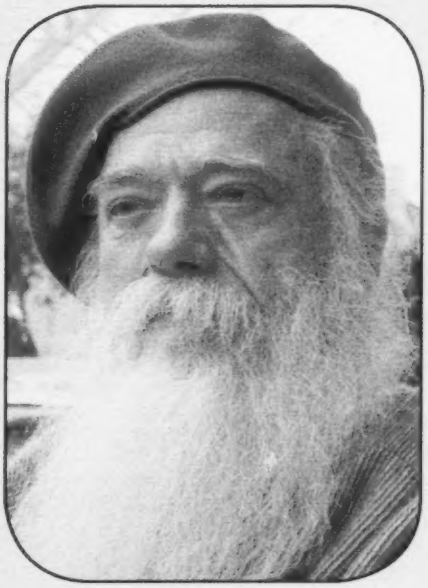
Adoption par une division scolaire de lignes directrices inclusives sur l'identité sexuelle

La Commission a contribué à la résolution de la plainte déposée par Elizabeth Burgos contre la Division scolaire River East Transcona. M^me^ Burgos avait allégué que la Division avait fait preuve de discrimination à l'égard de sa fille transgenre, Bella, lorsqu'on avait refusé à cette dernière l'accès aux toilettes des filles à l'école primaire qu'elle fréquentait. Avant même que la plainte soit entendue par le Tribunal d'arbitrage des droits de la personne, la Division a entrepris une révision de ses lignes directrices sur l'identité sexuelle, afin de clarifier les droits des élèves et des employés transgenres, de cerner des situations particulières dans lesquelles les personnes transgenres pourraient demander des mesures d'adaptation et d'établir un processus pour le traitement de ces demandes. Les discussions en vue de la résolution de la plainte ont permis à la Commission de présenter son approche de l'inclusion des genres fondée sur les droits de la personne et ont mené la Division scolaire River East Transcona à donner l'exemple à d'autres éducateurs, au Manitoba et partout au Canada, de garantir l'égalité des droits pour tous les élèves et les membres du personnel. La Commission a depuis révisé ses propres lignes directrices, *La discrimination fondée sur l'identité sexuelle*, qui fournissent des renseignements supplémentaires afin d'aider les membres du public à se pencher sur cette question.

Légende : Elizabeth Burgos et sa fille Bella

Une décision qui souligne la responsabilité du plaignant d'établir qu'il a un besoin fondé sur une incapacité pour que ce besoin soit pris en considération

Au cours de l'été 2016, après avoir entendu les plaintes dans l'affaire *Pollock, Kinvig, Renard and Gordon c. Winnipeg Condominium Corp. No. 30*, l'arbitre Lynne Harrison a rendu publiques ses décisions. Chaque plaignant a allégué que la corporation condominiale avait fait preuve de discrimination lors de rénovations de l'extérieur du bâtiment, en manquant de répondre de façon raisonnable à leurs besoins respectifs d'avoir des fenêtres non teintées. Dans ses décisions, M^me^ Harrison a conclu que chaque plaignant présentait en effet une incapacité mais, en dépit de la preuve médicale présentée pendant l'audience, qu'elle n'était pas convaincue qu'au moins l'un d'eux avait établi que le besoin d'avoir des fenêtres non teintées était fondé sur une incapacité. Ces décisions soulignent la responsabilité de la personne qui demande des mesures d'adaptation d'établir qu'elle a un besoin fondé sur une incapacité - et non pas sur une préférence - dont doit ensuite tenir compte l'employeur, le prestataire de services ou le fournisseur de logements.



Légende : Jim Derksen

Une mesure de redressement pour toutes les personnes âgées touchées par la discrimination

En septembre 2016, une plainte par Jim Derksen alléguant que la Ville de Winnipeg avait fait preuve de discrimination contre les usagers du service Handi-Transit a été résolue avec l'aide de la Commission. Le conseil municipal a approuvé la décision de rembourser toutes les personnes âgées qui avaient utilisé le service Handi-Transit sans bénéficier du tarif réduit pour aînés que la Ville offrait aux usagers du transport en commun ordinaire. Les personnes concernées seront remboursées pour la différence de tarif payé par le passé. Le conseil municipal a aussi établi un processus par lequel les usagers pourront faire leur demande de remboursement ou recevoir un crédit. Ce règlement, qui crée un précédent, confirme que les mesures de redressement relatives aux droits de la personne doivent viser à rétablir l'intégralité des personnes touchées par la discrimination.

THE COMPLAINT PROCESS

Intake

- Intake officers respond to general enquiries by phone, email or in-person at our Brandon and Winnipeg offices
- They provide information about *The Human Rights Code* and make referrals to other agencies where appropriate
- If a person wants to make a complaint they provide them with an Intake Questionnaire to complete
- They review the Intake Questionnaire and help to draft a 1-2 page complaint that sets out the allegation
- PRE-COMPLAINT MEDIATION OFFERED
- The complaint is registered by the Executive Director and served on the Respondent.
- The Respondent typically submits a formal reply to the complaint.
- PRE-INVESTIGATION MEDIATION OFFERED

Commissioners' Decision

- The Commissioners review the complaint, the Reply, the IAR and any submissions made by the parties
- They decide if there is enough evidence to refer the complaint to the Human Rights Adjudication Panel
- BOARD DIRECTED MEDIATION OFFERED
- The Commission asks the Chief Adjudicator to designate a member of the Adjudication Panel to determine the complaint

Investigation

- Investigators review the complaint and reply and other information on file and request further documents if necessary
- They interview the parties and sometimes other witnesses they believe have relevant information
- They prepare an Investigation Assessment Report (IAR) that provides a summary of the evidence they have considered and an analysis of the evidence according to human rights law and principles
- The IAR includes a recommendation as to whether the complaint should be dismissed or sent to an independent adjudicator for a final decision
- The parties are given the opportunity to make a submission in response to the IAR

In 2016, based on continued efforts to create efficiencies in the complaint process, the Commission reduced the average time it takes to investigate a complaint from 9.5 months to 6 months.

Adjudication Hearing

- A member of the Human Rights Adjudication Panel convenes a public hearing to decide the complaint
- The Commission works with the Complainant to present the complaint to the adjudicator
- If the complaint is proven, the Adjudicator awards remedies under *The Human Rights Code*

Pre-Complaint Settlement Highlight:

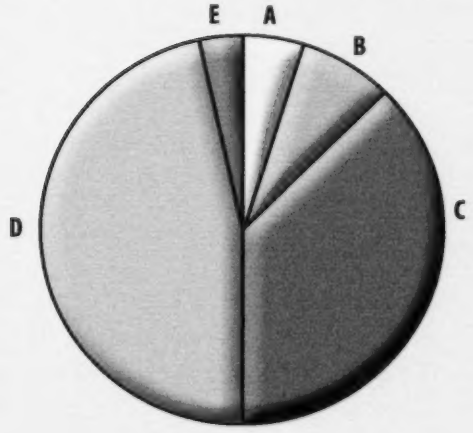
In the fall of 2016 the Commission was approached by a parent of a young child complaining that the NHL's policy requiring her to purchase a separate ticket for her 2 year old child for the fall Heritage Classic, even though the child would sit in her lap during the game, discriminated against her based on family status. The Commission assisted the parties in resolving the issue before a complaint could be registered. The NHL promptly reviewed the policy and agreed to change it so that children under 2 now do not require a ticket for special games if sitting on a parent's lap, which is in line with the Winnipeg Jet's existing policy.

Complaint Activity in 2016

Protected Characteristics	Potential complaints resolved	New complaints registered in 2016	Complaints carried over into 2016	TOTAL active complaints	Complaints resolved through mediation	Complaints not pursued	Complaints considered by Commissioners	Complaints terminated / Respondent offer found reasonable	Complaints referred to Adjudication	Complaints resolved prior to Adjudication hearing
Age	2	28	32	60	3	3	13	0	0	0
Ancestry	1	44	80	124	7	19	22	0	0	0
National Origin	0	14	7	21	0	4	2	0	0	0
Ethnic Origin	0	0	1	1	0	1	0	0	0	0
Disability	13	129	196	325	39	22	60	0	6	0
Marital/Family	0	8	27	35	3	4	8	0	0	0
Political Belief	1	5	6	11	0	2	1	0	0	0
Religion	3	5	12	17	1	0	3	0	0	0
Sex (including Pregnancy)	2	36	69	105	0	11	13	1	4	14
Gender Identity	0	3	3	6	0	0	0	0	0	1
Sexual Orientation	0	4	5	9	0	0	2	0	0	0
Social Disadvantage	0	1	1	2	0	2	0	0	0	0
Source of Income	1	4	5	9	1	1	1	0	0	0
Other	0	9	10	19	2	2	5	0	0	0
TOTALS	**23**	**290**	**454**	**744**	**66**	**71**	**130**	**1**	**10**	**15**

Complaints dismissed	**114**
Complaints substantiated	**16**

Complaints Registered in 2016 by Nature of Allegation



- A Sexual Harassment (16)
- B Other Harassment (26)
- C Reasonable Accommodation (99)
- D Differential Treatment (139)
- E Reprisal (10)

Total Complaints = 290

COMPLAINT STATISTICS

Number of enquiries (phone / email / in-person)

4349

Number of individuals interested in making a complaint (intake questionnaires sent out)

792

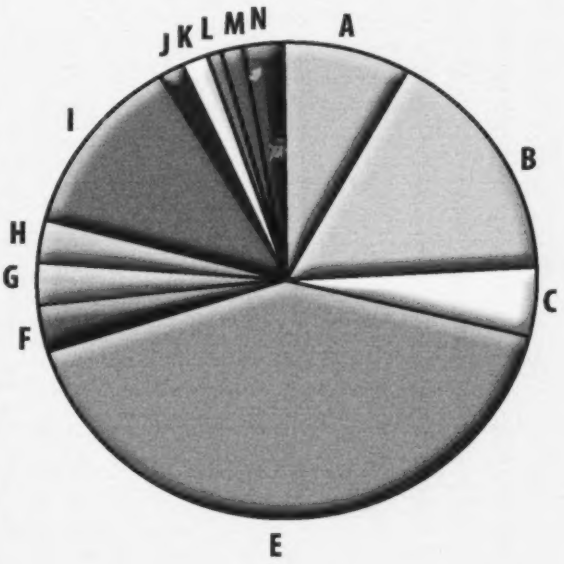
Number of files opened (2016)

451

Number of individuals referred to other agencies or resources

543

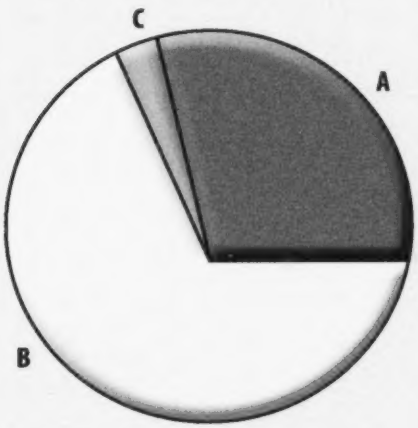
Complaints Registered in 2016 by Protected Characteristic



- A Age (28)
- B Ancestry (44)
- C National Origin (14)
- D Ethnic Origin (0)
- E Disability (129)
- F Marital/Family Status (8)
- G Political Belief (5)
- H Religion (5)
- I Sex (Including Pregnancy) (36)
- J Gender Identity (3)
- K Sexual Orientation (4)
- L Social Disadvantage (1)
- M Source of Income (4)
- N Other (9)

Total Complaints = 290

Formal Complaints Registered in 2016 By Area



- **A** Services (87)
- **B** Employment (189)
- **C** Housing (9)
- **D** Contracts (0)

Total Complaints = 290

EDUCATION PROGRAMS & PROMOTING HUMAN RIGHTS

The Commission's three-year strategic plan prioritizes establishing the Commission as a primary resource on human rights issues in the province and developing the Commission's role as an educator.

In 2016, the Commission began implementing that plan which included targeted initiatives to educate the public about the rights and responsibilities in *The Human Rights Code* and promoting human rights through education, outreach, and special events.

Seminar Program

In 2016, the Commission refreshed its seminar program based on feedback from seminar participants and the general public. A suite of four basic, half-day seminars were offered to businesses in Brandon and Winnipeg: The Business of Human Rights, Harassment in the Workplace, Reasonable Accommodation in the Workplace and Mental Health in the Workplace. The seminars offer an opportunity for participants to work through scenarios with the presenter, learning how to identify common human rights issues and respond to them based on the principles in *The Code*. Approximately 265 individuals particip ated in our seminars in 2016.

"...examples and scenarios were really helpful; presenter was very inviting of questions and gave thoughtful answers"- Seminar participant

Discrimination against persons with disabilities who use service animals

Following completion of our public consultation on service animals, in January 2016 the Commission held a seminar specifically on discrimination against persons who use service animals. This, coupled with new resources for the public on how to identify a service animal and practical tips on ensuring that those who use service animals are treated with dignity and respect has been successful in raising awareness about discrimination experienced by this group.

Customized seminars

The Commission continued to respond to requests to visit workplaces offering customized seminars for a modest fee. In 2016, more than 1400 individuals participated in a range of sessions covering the basics of human rights, but also focusing on issues of interest including discrimination based on gender identity, discrimination against person who use service animals, mental health in the workplace and harassment. The positive feedback we have received in response to these sessions and the level of discussion and engagement confirms that there continues to be a role for in-person, interactive discussion about human rights issues in the workplace. We were also very pleased to have our Business of Human Rights seminar for service providers accredited by the College of Social Work of Manitoba, enabling participants to earn continuing education credits for attending our course.

Commission creates new human rights award

In 2016 the Commission created a new award in honour of Aaron Berg, former counsel to the Commission and human rights lawyer. The inaugural award will be given out in December 2017 to a person involved in the legal profession (lawyer, paralegal, legal assistant or law student) who has advanced human rights in the province due to their legal work. Aaron was involved in several high profile cases before the Supreme Court of Canada advancing women's rights, including *Janzen v. Platy Enterprises and Brooks v. Canada Safeway*.

EDUCATION PROGRAMS & PROMOTING HUMAN RIGHTS

Commission hosts rights agencies from across the country

In November 2016, the Commission hosted commissions from across the country for the mid-year meeting of CASHRA (Canadian Association of Statutory Human Rights Agencies). In addition to CASHRA business, the visiting agencies attended a reception with local human rights agencies and toured the Canadian Museum for Human Rights.

Recognizing local advocates

The Commission partnered with the Canadian Human Rights Commission and the Manitoba Association for Rights and Liberties to host the annual Human Rights Awards event to celebrate International Human Rights Day on December 10. The Human Rights Commitment Award was given to Tracia's Trust - Manitoba's Strategy to Combat Sexual Exploitation and Human Trafficking, a provincial government strategy named in honour of Tracia Owen who died tragically at the age of 14. Tracia's Trust was honoured with a piece of art created by Brandon artist, Chris Cooper. The Sybil Shack Human Rights Youth Award was given to UND law student, Lauren Milne, for her involvement and writing on various women's rights issues.

Joining with the community to promote rights

The Commission joined with the community to promote human rights by attending and presenting at numerous events in 2016. The Commission welcomes any opportunity to share information about *The Human Rights Code* and its principles and to raise awareness about human rights issues and our complaint process. In 2016 Commission staff attended more than 50 community events, conferences and other events.

BOARD OF COMMISSIONERS

Chairperson

Yvonne Peters
is a human rights lawyer in Winnipeg. She has a Bachelor of Arts and a Bachelor of Law from the University of Saskatchewan and a Bachelor of Social Work from the University of Regina. She is Vice President of the Canadian Association of Statutory Human Rights Agencies. She also Co-Chair of the Manitoba Accessibility Advisory Council, Vice-President of the Legal Help Centre and a Board member of the Winnipeg Folk Festival.

Vice-Chairperson

Loretta Ross
is a lawyer who has provided counsel to numerous First Nation governments and other organizations and focuses on child and family matters, trust and corporate law, land claims and residential school claims. She has a Bachelor of Law from Queens' University. She is a member of the Hollow Water First Nation in Manitoba. She is on the board of Marymound Inc. and Families First Foundation.

Commissioners

Leo Aniceto
is a lawyer at Agassiz Community Law Centre, Family Unit, Legal Aid Manitoba. He previously practiced as a solo practitioner for approximately five years helping clients in the areas of family law, criminal law, child protection and real estate. He is an active member of the Filipino community.

Karen Banuga
is the Executive Assistant, Vice President People & Planning, Copyright Officer, Access and Privacy Coordinator and Records Officer for Assiniboine Community College. She has a Bachelor of Arts Degree from Brandon University and is a member of the Islamic Community. She loves to travel and finds it helpful in understanding other cultures and belief systems.

John Burchill
is a civilian manager with the Winnipeg Police Service. He has Bachelor of Arts in Criminal Justice from Athabasca University, a Bachelor of Law from the University of Manitoba and a Master of Laws from Osgoode Hall. He was a police officer for 25 years, six of which were spent as a supervisor of the Hate Crimes Team. Prior to re-joining the Police Service he worked as a Crown Attorney with Manitoba Justice and a Risk Manager with the University of Manitoba.

BOARD OF COMMISSIONERS

Commissioners

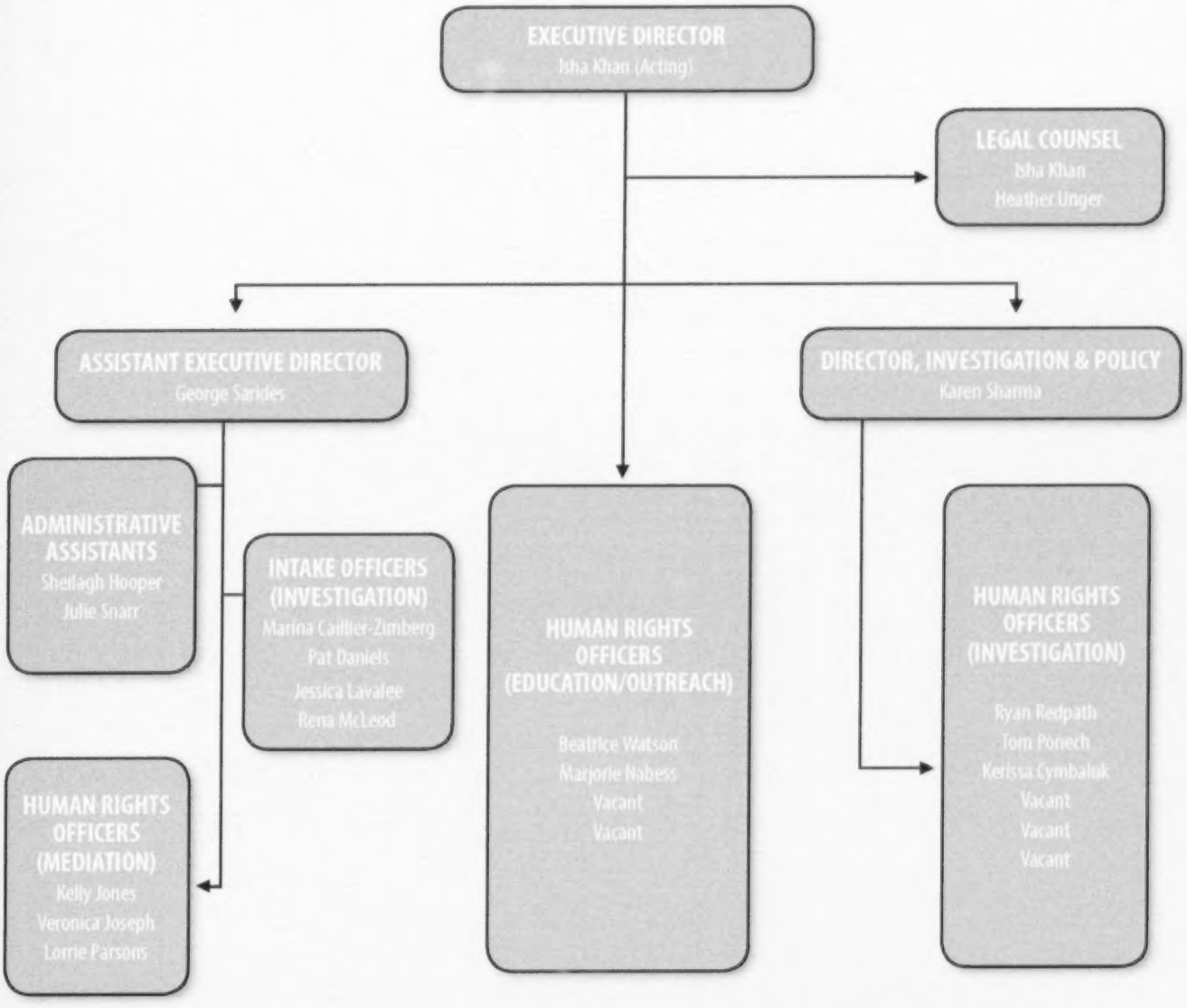
André Doumbè
is the Market Information Officer at the Market Analysis Group, Grain and Oilseeds Division for Agriculture Canada. He studied Business Administration and was Purchasing Manager at Champs Food Systems from 1986 to 1998. He was born in Cameroon and has over twenty years of grassroots, community involvement. He is President of the African Communities of Manitoba Inc. (ACOMI), member of the Manitoba Immigration Council; and volunteers at United Way of Winnipeg as a member of the education Committee. He is past President of Sous le Baobab.

Diane Dwarka
is a retired librarian and passionate community volunteer whose activities cover social, legal, human rights, educational, community, and religious/spiritual issues. She has served on local, provincial and national organizations and has been president of the Council of Caribbean Organizations of Manitoba, Community Legal Education Association, Manitoba Association for Multicultural Education. She is currently president elect of the Women's Inter- Church Council of Canada, and Chair of Red River College Alumni. Among the many awards she has received is a Public Legal Education Award, the YM-YWCA Women of Distinction Award, the Red River Distinguished Alumnus Award, the Premier's Award for Volunteerism, the B'nai Brith Human Rights Award, was 2014 Folklorama Ambassador General and was humbled to receive an eagle feather.

Joan Hay
is a Community Helper/ emergency Services Worker at Ma Ma Wi Chi Itata Centre Inc. and also works as a Residential Support Worker at the Native Women's Transition. Joan co-authored a book on community development titled *In Their Own Voices: Building Urban Aboriginal Communities*, and is the Past President of the Spence Neighbourhood Association. She has lived in Winnipeg's inner city for over thirty years and has been involved with many inner city boards and committees. Joan is of Ojibwe/Dakota descent from Waywayseecappo First Nation.

Donn Short
is a professor at Robson Hall, Faculty of Law, University of Manitoba. He is the author of *Don't Be So Gay: Queers, Bullying, and Making Schools Safe*. He is the recipient of a research Fellowship from the Law Foundation of British Columbia, a Social Sciences Humanities Research Council Standard Research Grant, as well as other academic honours, awards and prizes. At Robson Hall, he founded the group Outlaws and is the founding Editor-in-Chief of the Canadian Journal of Human Rights. He has written a number of dramatic works and is currently at work on two more books - one dealing with bullying in high schools and another assessing sexual orientation and religion-based rights claims. He is a member of the education committee of Eagle Canada Human Rights Trust.

ORGANIZATION CHART 2016



The Commission acknowledges the contributions of all staff hired on a casual basis in 2016 and not reflected above.

HUMAN RIGHTS ADJUDICATION PANEL

Sherri Walsh-
Chief Adjudicator

Lawrence Pinsky

Robert Dawson

M. Lynne Harrison

Peter Sim

Dan Manning

The Human Rights Adjudication Panel ("the Panel") is an administrative tribunal which is independent from the Manitoba Human Rights Commission ("the Commission"). It is comprised of Adjudicators who are charged with adjudicating complaints of discrimination made under *The Human Rights Code* ("the *Code*"). Adjudicators are lawyers who have experience and expertise in human rights matters.

The *Code* was amended in 2012 to create the position of Chief Adjudicator in order to enhance the Panel's independence from government. Prior to the creation of this position, when the Commission determined that a matter should proceed to adjudication it asked the Minister of Justice to designate an Adjudicator to hear the matter.

Since the creation of the Chief Adjudicator role, when the Commission determines that a matter should be resolved by way of adjudication, it sends a letter to the Chief Adjudicator requesting that a member of the Panel be designated to conduct a public hearing into whether the *Code* has been contravened.

If an Adjudicator finds that the *Code* has been contravened, the Adjudicator has the authority to make remedial orders to compensate for injury to the complainant's dignity, self-respect and feelings as well as for any financial losses, and expenses incurred, or benefits lost by reason of the contravention. An Adjudicator may also make orders to ensure a respondent's future compliance with the *Code*, including requiring the respondent to develop policies or undergo education and training with respect to human rights.

Adjudication hearings may be conducted in English or in French and typically last between 3-8 days. They may be held in any area of the Province, depending on what is most convenient for the parties to the Complaint.

Statistics for 2016

Matters referred to the Panel for Adjudication

In 2016, the Commission sent 10 matters to the Panel to be determined by adjudication. Of those, three resolved without proceeding to a hearing while a fourth settled mid-hearing.

Decisions

Members of the Panel released six decisions, all of which had been sent to it by the Commission in years prior to 2016.

Settlements

Twelve matters which had been sent to the Panel in previous years, were settled by the parties, before proceeding through adjudication.

MESSAGE FROM THE CHIEF ADJUDICATOR

As Chief Adjudicator, I have the pleasure to present this 2016 Annual Report to the Members of the Legislative Assembly and to all Manitobans.

In May of 2016 I attended a Pan-Canadian Human Rights Tribunal Forum which was hosted by the Canadian Human Rights Tribunal. This was the first time since 1999 that human rights tribunals from various Canadian jurisdictions had assembled in one place. The Forum provided an engaging and useful opportunity for the participants to exchange best practices and ideas about how each of our respective tribunals might improve access to justice. Upon my return, I was happy to share what I learned with representatives from Manitoba's Department of Justice.

In the Annual Report that I delivered last year, I indicated that the members of the Panel would be working together to establish a set of procedural guidelines which would afford parties to adjudications a clear understanding of the procedure to be followed in hearings generally and which would allow for more consistency in adjudicative proceedings. We are continuing our work in this regard.

As members of an administrative tribunal, Adjudicators deliver access to justice within the framework of the legislation which governs us. In furtherance of this, I have requested an amendment to the *Code* which would allow Adjudicators to offer their expertise to assist parties in reaching a satisfactory resolution through mediation. Mediation at the adjudication stage would enhance the parties' access to justice because it would offer them a more expedited, informal and less costly resolution process.

The purpose of a system for administering justice in human rights law is to protect the dignity and agency of every individual in society and to remove barriers that prevent individuals from being able to exercise choice about how they live their lives – barriers such as discrimination and marginalization.

Eleanor Roosevelt, in one of the last speeches she made to the U.N. during her work to create the *Universal Declaration of Human Rights*, emphasized the importance of the settings where people first learn of their human rights and responsibilities saying:

> "Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighborhood he lives in; the school or college he attends; the factory, farm or office where he works."
> (Eleanor Roosevelt, Remarks at the United Nations, March 27, 1953, quoted in *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, MaryAnn Glendon, 2002 Random House at p.239).

Mrs. Roosevelt recognized that it is in these "small places"– where they work where they live that people experience the need to have their basic human rights protected. These are the very settings which form the subject matter of the hearings over which Adjudicators preside. Here are some examples from decisions that were released by Adjudicators in 2016.

MESSAGE FROM THE CHIEF ADJUDICATOR

In one matter the complainant, who was employed as a cleaner by a household cleaning service, alleged that her employer fired her because she became pregnant. In allowing the complaint, Adjudicator Dawson agreed that the complainant's pregnancy was one of the reasons for her termination and that she had, therefore, been discriminated against on the basis of sex. He also found that there was no *bona fide* requirement or qualification for her employment that would have lawfully justified such discrimination.

In another decision also arising in a workplace context, three complainants alleged that they had been harassed by their employer on the basis of ancestry, sex and disability. Adjudicator Dawson determined that the actions of their employer, which included sending inappropriate emails and making unwanted sexual advances, created a workplace that was volatile and intimidating.

In allowing the complaints, the Adjudicator said that the complainants had suffered "egregious indignity" in their workplace and because of their economic circumstances, had felt trapped and without alternative but to endure the unwanted conduct of their employer. He awarded each of the complainants $20,000 as damages for injury to their dignity, feelings or self-respect.

The amount of these awards which is unprecedented, acknowledges the vulnerability of individuals when they are subjected to discrimination in the settings that are so fundamental to their daily existence – such as their workplace.

This was a year when the attention of Manitobans was appropriately turned to human rights on an international level as the Province received refugees who were fleeing atrocities that were taking place in their home countries –atrocities that were often caused by discrimination on the basis of characteristics such as religion, sex and ethnic background. The need to protect the human rights of these individuals is clear.

The need to protect the human rights of individuals on a domestic level is equally clear. Manitoba's society is comprised of a diverse population whose needs and abilities are equally diverse and complex. The challenges of everyday life must be addressed in ways that allow all individuals to be treated with respect. How that is achieved is not always obvious.

This is why there is a need to have clear standards of behaviour that serve to guide people in their interactions with each other and that protect the rights of all members of society, especially when they are at their most vulnerable.

Adjudications of human rights complaints which result in clearly worded decisions articulate and promote such standards.

I thank the members of the Panel for the work they do to protect human rights and to further the goal of allowing people to live their lives in "small places, close to home" with dignity and in peace.

Sherri Walsh
Chief Adjudicator

THE MANITOBA
HUMAN RIGHTS
COMMISSION

LA COMMISSION DES
DROITS DE LA PERSONNE
DU MANITOBA

Winnipeg
700 - 175 Hargrave Street
Winnipeg, Manitoba R3C 3R8
Phone: (204) 945-3007
Fax: (204) 945-1292

Brandon
341 - 340 Ninth Street
Brandon, Manitoba R7A 6C2
Phone: (204) 726-6261
Fax: (204) 726-6035

TOLL FREE: 1-888-884-8681
hrc@gov.mb.ca
manitobahumanrights.ca
Visit us on

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